F I S C A L I M P A C T R E P O R T

ORIGINAL DATE 2/5/15
SPONSOR Barnes, S.M. **LAST UPDATED** 2/10/15 **HB** 296

SHORT TITLE Tax Credit for Lease of Solar Energy Installation **SB**

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
	NFI	**			Recurring	General Fund

(Parenthesis ( ) indicate revenue decreases

Note: see "FISCAL IMPLICATIONS" below.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$50.0	$50.0	$0.0	$100.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Energy, Minerals and Natural Resources Department

NOTE: This FIR was previously published without EMNRD's analysis. This is a revised FIR that includes EMNRD's comments.

SUMMARY

Synopsis of Bill

House Bill 296 extends the solar market development tax credit for residential and small business solar thermal and photovoltaic systems by allowing leased systems access to the credit.

The effective date of the act is not stated – assume 90 days after adjournment or June 19, 2015. The provisions of the bill are applicable to taxable years beginning on or after January 1, 2015.

Solar market development tax credits are sunset for installations that are completed after December 31, 2016.

FISCAL IMPLICATIONS

This bill will have no impacts through December 2016, when the provisions of the bill expire. The Solar Market Development Tax Credit for residential and small businesses is capped at $2 million for solar thermal systems and $3 million for photovoltaic systems. Including leased systems in the credit will not increase these caps. It is expected that the photovoltaic systems credit will be fully subscribed each year. There may be some unused cap for solar thermal systems, but most of the anticipated leases will be for photovoltaic systems, not solar thermal systems. The solar market tax credits appear to be “first come, first served.” That is, EMNRD approves credits until the $2 million or $3 million caps are fully subscribed. Any additional applications will be denied. Leased systems installed by December 31, 2016 would become eligible for this credit. However, judging from previous responses to sunsets, there will be a rush to claim credits as early in FY 2017 as possible. The total approvals will be capped whether leased systems are added to the mix or not.

EMNRD points out that this bill may have been introduced as a technical measure. If TRD or EMNRD denied a tax credit for a leased system in the past, the change proposed in this bill would allow a system installed at any time from 2006 when the credit was first approved through 2014 would become eligible for approval.

Specifically, EMNRD notes:

> “The additional applications for the Solar Market Development Tax Credit provided for by HB 296 could also include leased solar systems installed in previous years, depending on Taxation and Revenue Department requirements for retroactive personal income tax claims, due to the unchanged effective dates in HB 296.”

EMNRD also notes, “Because the 10 percent Solar Market Development Tax Credit applies to purchase and installation costs, it is not immediately clear what leasing expenses this expanded version of the credit would cover. Taxpayers that lease solar systems would not actually own the system and could put as little as $0 down, paying off the cost of the system over time, with interest. Additional clarification would be needed in a rulemaking process to determine eligible expenditures for the tax credit.”

This tax credit only applies to solar systems installed before December 31, 2016, so the benefit to leased solar systems will be short term. Further, since the solar photovoltaics credit has been nearly fully subscribed in recent years, the leased systems may be competing with the purchased systems for the limited credits.

EMNRD provides some data on uptake of the credit:

> “In general, a significant investment in solar systems is occurring throughout much of New Mexico. During the 2014 calendar year, $27 million was invested by homeowners and EMNRD approved $2.6 million in Solar Market Development Tax Credits for these homeowners. Installation of all of these solar systems paid $5.5 million in labor costs. There were 1,023 household scale solar systems installed statewide that added 6 megawatts of solar capacity to the electric grid. For additional data on this program see www.CleanEnergyNM.org. (Source: data from certified Solar Market Development Tax Credit applications.)”

The underlying credit may be counter to the LFC tax policy principles of adequacy, efficiency, accountability and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures can be difficult. However, the solar market development tax expenditure is a tax credit applicable to personal income tax. The EMNRD approves the credit, while TRD administers the non-refundable credit applications. Both aggregate numbers are important, but readily obtainable. What is missing in this case is a requirement that EMNRD and TRD report to the legislature periodically the approvals and applications, as well as estimated energy savings for the aggregate approvals. LFC staff recommends adding a sunset date and accountability provisions to this bill.

SIGNIFICANT ISSUES

Adding leases to eligibility for this tax credit can be viewed as technical, rather than substantive. Both solar photovoltaic and solar thermal systems are quite capital intensive, with payback periods extending, typically, ten or eleven years. Thus, the obstacle to widespread adoption of these technologies is generally financing. Adding leases to the credit eligibility adds some financing options that may increase adoption. However, an increase in adoption by homeowners of this financing option will not increase the fiscal impacts on the general fund which are capped as noted above.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is <u>not</u> met since TRD and EMNRD are <u>not</u> required in the bill to report annually or periodically to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose. This lack of accountability is noted for both purchased, as well as the leased systems proposed in this bill.

ADMINISTRATIVE IMPLICATIONS

EMNRD reports moderate administrative impacts from this bill:

> "Because the tax credit is currently in place, EMNRD has an existing program to review applications and provide certifications. However, extending eligibility to leased solar systems will require rule changes to define the eligible leasing costs for the credit and require the creation of a new program to handle solar leasing applications."
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> "A significant rulemaking process will be needed for amendment of 3.3.28 NMAC to address issues such as: 1) acceptable lease agreement provisions; 2) additional application information needed; 3) ownership of tax credits; and 4) compliance with federal IRS regulations. HB 296 does not provide any specifics about what qualifies, what the requirements would be, and what costs are eligible."

CONFLICT, DUPLICATION

HB 296 conflicts with HB 70 and its duplicate SB 391, which seek to extend the sunset date for the Solar Market Development Tax Credit by four years, from December 31, 2016 to December 31, 2020. The current expiration of the date of the Solar Market Development Tax Credit, of December 31, 2016, remains unchanged in HB 296.

OTHER SUBSTANTIVE ISSUES

There is a December 31, 2016 sunset date for the solar market development tax credit being amended by this bill. The LFC recommends adding sunset dates to all tax expenditure bills, as well as accountability provisions. This is a particularly good tax expenditure for reporting purposes, since EMNRD processes applications for the credit and can relatively easily determine aggregate energy savings and TRD can relatively easily determine aggregate annual applications of the credit to determine delayed costs because taxpayers may not be able to utilized the approved credits if the credits exceed liabilities.

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